cipal case have been deemed ancillary and such a holding is, it is submitted, correct on principle. *Dewey* v. *West Fairmont Gas Co.*, 123 U. S. 329; *Hatch* v. *Dorr*, 4 McLean (U. S.) 112. See *Campbell* v. *Golden Cycle Mining Co.*, 141 Fed. 610, 613.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ANTICIPATION OF FEDERAL QUESTION. — In a bill for specific performance of a contract made by residents of the same state the plaintiff, after the necessary averments, alleged that the defendant based his refusal to comply with the contract on a certain act of Congress. And he further alleged that such act was either inapplicable or against the Constitution. *Held*, that the federal court is without jurisdiction. *Louisville & Nashville R. R. Co.* v. *Mottley*, 29 Sup. Ct. 42 (U. S. Sup. Ct., Nov., 1908).

The general presumption is that a federal court is without jurisdiction until the contrary affirmatively appears on the record. *Ex parte Smith*, 94 U. S. 455; *Robertson* v. *Cease*, 97 U. S. 646. It is usually sufficient that the facts essential to jurisdiction appear in any part of the record. *Denny* v. *Pironi*, 141 U. S. 121. But when federal jurisdiction is invoked on the ground that the suit is "one arising under the Constitution and laws of the United States," such federal question must be shown by the plaintiff at the outset in his bill or declaration. *California Oil & Gas Co.* v. *Miller*, 96 Fed. 12. See *Houston & Texas Central R. R. Co.* v. *Texas*, 177 U. S. 66. Moreover, the allegations on which jurisdiction is based must be material to the plaintiff's real cause of action. *Joy* v. *City of St. Louis*, 201 U. S. 332. Therefore, if such averments have been inserted merely to make the suit one of federal cognizance, the case will be dismissed. *Robinson* v. *Anderson*, 121 U. S. 522. And it is well settled that in cases both of original jurisdiction and of removal an allegation in the nature of a reply to an expected defense will not confer jurisdiction. *Tennessee* v. *Union & Planters' Bank*, 152 U. S. 454; *Joy* v. *City of St. Louis*, *supra*. This seems correct, as the defendant might not in fact set up such defense. *Florida Central, etc., R. R. Co.* v. *Bell*, 176 U. S. 321. And even if such answer were made, that in itself would not be sufficient to bring the case within federal jurisdiction. *Colorado, etc., Mining Co.* v. *Turck*, 150 U. S. 138. See *Metcalf* v. *Watertown*, 128 U. S. 586.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — SUIT AGAINST "STATE DISPENSARY COMMISSION." — The Legislature of South Carolina created a commission to wind up the affairs of the state liquor business. The complainants, who claimed for liquor sold to the state, sued the commission in the federal court for an accounting, an injunction, and a receivership. *Held*, that the suit is not one against the state within the meaning of the Eleventh Amendment. *Murray* v. *Wilson Distilling Co.*, 164 Fed. 1 (C. C. A., Fourth Circ.). See NOTES, p. 289.

INJUNCTIONS — ACTS RESTRAINED — INTERFERENCE WITH HUNTING RIGHTS. — The defendant, claiming the exclusive right to hunt ducks on an arm of certain navigable waters, persistently prevented the plaintiff from hunting, by rowing among the decoys and frightening the ducks. *Held*, that the plaintiff will be protected by injunction. *Ainsworth* v. *Munoskong Hunting and Fishing Club*, 116 N. W. 992 (Mich.).

The owner of realty has such a right in all game on his property that an injunction will be issued to prevent hunting thereon, even though the entire property is subject to use as a waterway. *Sterling* v. *Jackson*, 69 Mich. 488. And damages will be given against one who intentionally frightens game on another's land. *Ibottson* v. *Peat*, 3 H. & C. 644. The right to capture and subject to ownership game on public lands, or fish in public navigable waters, resides in the people of the sovereignty. *Ne-pee-nauk Club* v. *Wilson*, 96 Wis. 290. Where this right is exercised as a vocation, it will be protected as such, against wrongful acts. However, competition in itself for such game is not unlawful. See *Ibottson* v. *Peat*, *supra*. But an action on the case was allowed for wilfully

disturbing ducks coming toward an ancient decoy. *Carrington* v. *Taylor*, 11 East 571. And an exercise of the right to fish in navigable waters, that would exclude all others from fishing therein, will be enjoined. *Morris* v. *Graham*, 16 Wash. 343. Then, although the right to hunt on public lands may be exercised solely as a recreation, it should, nevertheless, be adequately protected against what may be termed unlawful competition.

INNKEEPERS — DUTY TO GUESTS — LIABILITY OF INNKEEPERS FOR INSULT TO GUEST. — The plaintiff was a guest at the defendant's hotel. At night one of the employees of the hotel, by order of the defendant, forcibly entered the plaintiff's room, used insulting language, and threatened to turn her out as a disreputable woman. *Held*, that the defendant is liable. *De Wolf* v. *Ford*, 40 N. Y. L. J. 811 (N. Y., Ct. App., Nov. 7, 1908).

This decision reverses the decision of the lower court criticized in 21 HARV. L. REV. 58.

INSURANCE — DEFENSES OF INSURER — EXECUTION OF INSURED FOR CRIME. — A insured his life with the defendant company under a policy which contained no provision against death at the hands of justice. The policy was executed at the office of the company in Wisconsin and by its terms was made payable there. A special act of the Wisconsin legislature incorporating the company empowered it "to make all and every insurance appertaining to or connected with any life risks." The insured committed a murder and was convicted and executed therefor. *Held*, that there may be a recovery on the policy. *McCue* v *Northwestern Mut. Life Ins. Co.*, 14 Va. L. Reg. 584 (C. C. A., Fourth Circ.).

The federal court here goes squarely against a prior decision in the United States Supreme Court. *Burt* v. *Ins. Co.*, 187 U. S. 362. But it justifies itself on the ground that the policy is a Wisconsin contract and therefore its validity should be determined by the public policy of that state. It finds that insurances like that in the principal case are not against the public policy of Wisconsin because the statute allows insurance on "any life risks," and because the Supreme Court of Wisconsin has allowed recovery on silent policies where the insured has committed suicide. *Patterson* v. *Mutual Life. Ins. Co.*, 100 Wis. 118. It is interesting to note that the court considers the question of public policy involved in execution cases as identical with that raised by suicide cases. For a discussion of cases similar to the one under consideration, see 21 HARV. L. REV. 530.

INTERPLEADER — SCOPE OF THE REMEDY — INABILITY OF COURT TO ENJOIN. — By proceedings in a state court C attached a judgment recovered by B against A in a federal court. A filed a bill of interpleader in the state court. *Held*, that the bill will not lie, since a state court cannot interfere with the power of a federal court to enforce its judgment. *Smith* v. *Reed*, 70 Atl. 961 (N. J., Ct. Ch.). See NOTES, p. 294.

JOINT WRONGDOERS — LIBEL — CONTRACT TO INDEMNIFY PRINTERS AGAINST CLAIMS FOR LIBEL. — The plaintiffs agreed to publish the defendant's paper for him upon his promise to indemnify them "against any claims whatever in respect of any libel appearing." The plaintiffs were later sued for a libel which had appeared with their full knowledge, and had to pay damages. They then sued the defendant on the contract of indemnity. *Held*, that they cannot recover. *Smith & Son* v. *Clinton*, 25 T. L. R. 34 (Eng. K. B. D., Oct. 28, 1908).

The law allows no contribution between intentional and conscious wrongdoers. *Merryweather* v. *Nixan*, 8 T. R. 186. And contracts to indemnify such wrongdoers are void. *Arnold* v. *Clifford*, 2 Sumn. (U. S.) 238. The present case, therefore, is supported by the authorities. *Atkins* v. *Johnson*, 43 Vt. 78. It has never been decided, however, whether an express contract of indemnity would be a nullity where both parties are equally anxious to avoid the publica-